

EXHIBIT 7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Case No.: 23-35636
IN RE: Chapter 11

CHOSHEN ISRAEL, LLC, 355 Main Street
Debtor Poughkeepsie, NY 10601

-----X November 21, 2023
9:58 a.m.- 10:33 a.m.

23-35636-cgm Choshen Israel LLC Chapter 11

Linda M. Tirelli representing Choshen Israel LLC (Debtor)
Alicia M. Leonhard representing United States Trustee (U.S.
Trustee)

Doc# 23 Amended Motion to Dismiss Case for Cause and Notice
of Hearing, replacing ECF 16 filed by Eric W. Berry on behalf
of Shalom S. Maidenbaum with hearing to be held on 10/17/2023
at 09:00 AM at Videoconference (ZoomGov) (CGM) Responses due
by 10/10/2023,. (Attachments: # 1 Exhibit 1-Maidenbaum
Judgment v. Choshen (6-21-16) # 2 Exhibit 2-Maidenbaum v.
Choshen (6-28-16) # 3 Exhibit 3-Contempt Order

[DOCKET MATTERS AND APPEARANCES CONTINUED ON NEXT PAGE]

HONORABLE CECELIA MORRIS
UNITED STATES BANKRUPTCY JUDGE

DIGITALLY RECORDED PROCEEDING TRANSCRIBED BY:
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DOCKET MATTERS:

(4-25-23) # 4 Exhibit 4-Order Rescheduling Deposition and Contempt Proceeding (8-1-23) # 5 Exhibit 5-Severance Order (8-7-23) # 6 Exhibit 6-\$2MM note Choshen to Maidenbaum (2-23-15) # 7 Exhibit 7-\$275K note Choshen to Maidenbaum (2-23-15) #8 Exhibit 8-Maidenbaum Checks to Katz for Cardis # 9 Exhibit 9-Spreadsheet Showing Maidenbaum loans and equity investments (Cardis) # 10 Exhibit 10-AGs Amended Complaint v. Katz and Choshen # 11 Exhibit 11-Fischman guilty plea (12-15-22) # 12 Exhibit 12-Justice Reeds decision uphold AG claims (8-3-23) # 13 Exhibit 13-Cardis to Ultimex Source Code Agreement (2018) # 14 Exhibit 14-Goodman affidavit (2-9-23) #15 Exhibit 15-NY AG Judgment v. Fischman)

Doc# 10 Motion for Contempt togethr with Notice of Hearing and Proposed Order filed by Linda M. Tirelli on behalf of Choshen Israel LLC with hearing to be held on 9/19/2023 at 09:00 AM at Office of UST (355 Main Street, Poughkeepsie) Responses due by 9/12/2023,. (Attachments: # 1 Exhibit Exhibit A # 2 Exhibit Exhibit B # 3 Exhibit Exhibit C part 1 of 2 # 4 Exhibit Exhibit C part 2 of 2 # 5 Exhibit Exhibit D part 1 of 2 # 6 Exhibit Exhibit D part 2 of 2 # 7 Exhibit Proposed Order # 8 Exhibit Certificate of Service)

Doc# 42 Declaration in Opposition to Debtors Motion for Civil Contempt for Willful Violation of Bankruptcy Code Sections 362(a)(1) and 362(a)(6) (related document(s)10) filed by Jill L. Makower on behalf of Shalom S. Maidenbaum. with hearing to be held on 11/21/2023 at 09:00 AM at Videoconference (ZoomGov) (CGM)

Doc# 44 Objection to Motion (related document(s)16, 23) filed by Linda M. Tirelli on behalf of Choshen Israel LLC. with hearing to be held on 11/21/2023 at 09:00 AM at Videoconference (ZoomGov) (CGM) (Attachments: # 1 Exhibit Certificate of Service # 2 Exhibit Transcript)

APPEARANCES:

VIRTUAL (ZOOM.GOV) APPEARANCES

FOR THE DEBTOR: Linda Tirelli, Esq.
50 Main Street
Suite 1265
for Choshen Israel, LLC
White Plains, New York 10606

1 UNITED STATES TRUSTEE: Alicia M. Leonard, Esq.
2 Leo O' Brien Federal Building
3 United States Trustee
4 11A Clinton Avenue, Room 520
5 Albany, New York 12207
6
7 FOR SHALOM MAIDENBAUM: Erik W. Berry, Esq.
8 Berry Law PLLC
9 745 Fifth Avenue
10 Ste 5fl Floor
11 New York, New York
12
13 Michael Z. Brownstein, Esq.
14 Jill L. Makower, Esq.
15 Tarter Krinsky Drogin, LLP
16 1350 Broadway
17 11th Floor
18 New York, New York 10018
19
20
21
22
23
24
25

1 (Proceeding commenced 9:58 a.m.)

2 THE COURT: 23-35636 Choshen Israel LLC. State
3 your name and affiliation.

4 MS. LEONHARD: Good afternoon, your Honor -- oh,
5 good morning, Alicia Leonhard for the United States Trustee.

6 MR. BERRY: I'm Erik Berry for the creditor Shalom
7 Maidenbaum.

8 MS. TIRELLI: Good morning, your Honor, Linda
9 Tirelli on behalf of the Debtor Choshen Israel, LLC.

10 MR. BROWNSTEIN: Michael Brownstein, your Honor,
11 Tarter, Krinsky and Drogin, Counsel -- Co-counsel for Shalom
12 Maidenbaum.

13 THE COURT: Very good. So we have a motion for
14 sanctions for violation of the automatic stay and then a
15 motion to dismiss. Correct?

16 MR. BERRY: That's correct.

17 THE COURT: Ms. Tirelli, I believe it's your
18 motion for the violation of the automatic stay. Anything
19 you wish to add?

20 MS. TIRELLI: No, your Honor, I don't wish to add
21 anything at this time to our motion. I would like -- other
22 than to say that I noticed that Mr. Berry, I believe it
23 might have been Mr. Brownstein, somebody filed a whole pile
24 of papers last night. It was after like around 8:00 at
25 night, if I am not mistaken. I have not had a chance to

1 take a look at any of it, and I don't know if the Court is
2 considering that or not, but it was an extremely late
3 submission.

4 THE COURT: It's too late, I don't know what it
5 is.

6 MS. TIRELLI: Thank you, your Honor.

7 THE COURT: (Inaudible) Did somebody -- did you
8 all file something last night at 8:00?

9 MR. BERRY: Yes. What happened was, on Friday of
10 last week, the Choshen motion to dismiss was adjourned to
11 January 23. And that adjournment was rescinded, and so we
12 needed to file reply papers. And since I only learned about
13 the recission of that order late in the day, that's the best
14 we could do.

15 MS. TIRELLI: Your Honor, I don't understand that.
16 It's their motion to dismiss. I don't understand what that
17 means.

18 MR. BERRY: No. --

19 THE COURT: Mr. Berry, I don't need them.

20 MR. BERRY: The papers submitted last night did not
21 relate to the contempt application. They related to the
22 motion to dismiss which is our motion. That motion had been
23 adjourned according the docket and according to e-mail from
24 Ms. Ashmead (phonetical) until January 23, then Ms. Tirelli
25 yesterday objected to the adjournment, and so I figured I'd

1 --

2 THE COURT: You don't need that. You did it in the
3 beginning. You don't need to add anything to your
4 documents. I don't know what you are trying to add, if it
5 was just from today from then, you had your motion to
6 dismiss set, so why would you -- you're confusing me. I did
7 not--

8 MR. BERRY: We --

9 THE COURT: -- look at the documents. I'm ready
10 to go forward.

11 MR. BERRY: That's fine, your Honor. I'm just
12 explaining that because of the late recission of the
13 adjournment and the rescheduling of the hearing for today,
14 and that happened only yesterday, we had not been able to
15 put in reply papers, so I decided to put them in and let the
16 Court do what it wants to do.

17 THE COURT: That would be a sur reply. That would
18 be a sur reply. I did not read them, and I will not read
19 them.

20 MR. BERRY: Okay.

21 THE COURT: We're here for the motions for
22 sanctions on the automatic stay. Y'all have had your
23 filings on this. Anything you wish to add? Do you wish to
24 add anything?

25 MR. BERRY: Your Honor --

1 THE COURT: I think I have enough, Mr. Berry.

2 MR. BERRY: Oh, thank you.

3 THE COURT: The Debtor is asserting that the filing
4 of the motion seeking to sever the case and proceed only
5 against Aaron Fischman violated the Debtor's Choshen
6 Israel's stay. The Debtor seeks sanctions against Shalom
7 Maidenbaum, Mr. Maidenbaum, and his attorney Mr. Berry
8 that's on the phone today and Elliot Blumenthal.

9 On January the 21st, 2016, Mr. Maidenbaum commenced
10 actions against the Debtor and four co-defendants and that's
11 Fischman, Cardis Enterprise International BV, Cardis
12 Enterprise NV, Cardis Enterprise USA in the New York State
13 Supreme Court, Nassau County. Mr. Maidenbaum received two
14 judgments against the Debtor and the co-defendants.
15 According to the State Court judgments, Choshen Israel,
16 Fischman and three other defendants are liable to Mr.
17 Maidenbaum in the amount of 4,826,981.76 which includes
18 post-judgment interest.

19 On August the 2nd, 2023, the Debtor filed for
20 Chapter 11 relief. The Debtor listed Mr. Maidenbaum in his
21 petition, and his attorneys filed a notice of appearance on
22 August 3rd, 2023. On August the 4th, 2023, without notice
23 or a motion, an order was entered in State Court severing
24 Erik Fischman from the other co-defendants in the action
25 since (inaudible) the severance order. The severance order

1 also orders Mr. Fischman to comply with the post-judgment
2 discovery order entered against him. Debtor argues that the
3 entry of the State Court Severance Order violates Choshen
4 Israel's stay. The Debtor argues that by compelling
5 Fischman to proceed with post-judgment discovery in a case
6 in which he is a defendant but not also compelling Choshen
7 Israel somehow violates the stay of Choshen Israel.

8 Debtor argues that proceeding against Fischman who
9 is the guarantor makes little sense. The Debtor argues, and
10 again, I'm not sure why, that continuing discovery in any
11 form in any action to continue a case against the Debtor.
12 The Debtor also argues that the State Court proceeding has
13 not been stayed nor dismissed against the Debtor. There was
14 no violation of the stay in this case when Mr. Maidenbaum
15 through his attorney severed the Debtor from the State Court
16 action. Continuing to sever discovery against a non-debtor
17 such as Mr. Fischman who at the time was not a debtor in
18 bankruptcy, of course subsequent to that, we know what
19 happened, I've already dealt with it this morning, can never
20 be a violation of the stay in a Chapter 11 case where there
21 is no co-debtor stay.

22 A suit against a co-defendant is not automatically
23 stayed by the Debtor's bankruptcy filing. Queenie, Limited
24 versus Nygard International, 321 F.3rd, Second Circuit 2003,
25 also Teacher's Insurance and Annuity Assistance of America

1 versus Butler 803 F.2nd 61 Second Circuit 1986. It is well
2 established that stays pursuant to 362 (a) are limited to
3 debtors and do not encompass co-bankruptcy non-bankrupt
4 co-defendants. Section 362 does not preclude severance.
5 Wedgeworth versus Fiberboard, 706 F.2nd 541 Fifth Circuit
6 1983. We join in those courts concluding that the
7 protection of 362 neither applied to co-defendants, nor
8 precludes severance. That's Johns Manville. Happens to be
9 my case now. 26 BR 405 Bankruptcy Southern District of New
10 York 1983. The Debtor has moved for a violations of the
11 stay under 362 (a)(1) and (a)(6). 362 (a)(1) stays the
12 continuation of a judicial proceeding against the -- and
13 recovery of claims against the debtor. Likewise, 362 (a)(6)
14 stays any act to collect assets or recover a pre-petition
15 claim against the debtor. The term against the debtor
16 should be strictly construed, In re Johnson 548 BR 770
17 Southern District of Ohio, 2016.

18 Here, Mr. Maidenbaum was not pursuing a claim
19 against the debtor, he was proceeding to collect only
20 against Mr. Fischman, a non-debtor co-defendant. While
21 there are certainly rare and unusual circumstances where a
22 Court may extend the stay to protect a non-debtor, that is
23 where there is such identity between the Debtor and the
24 third-party defendant that the Debtor may be said to be a
25 real party defendant and the judgment against the

1 third-party defendant will in effect be a judgment or a
2 finding against the debtor. In re Johnson 548 BR 770
3 Southern District of Illinois -- Ohio, 2016. The Debtor has
4 not made any argument that this relationship is this in this
5 case. While it is true that Mr. Fischman is a former CEO of
6 the Debtor, a judgment against him will not be a judgment
7 against the Debtor because the debtor in this case in an
8 LLC.

9 Debtor does argue that any discovery Mr. Fischman
10 would need to produce would have to be produced through the
11 Debtor. In some cases, the imposition of a substantial
12 burden of discovery against the debtor may be enough to
13 impose the stay. In re Johnson 548 BR 770 again, Southern
14 District of Ohio, 2016. The Debtor provides the Court with
15 no evidence that the Debtor would be substantially burdened
16 by Mr. Fischman's compliance with the discovery order. It
17 is possible that Mr. Fischman has all of the discovery
18 requested by Mr. Maidenbaum in his possession. And even if
19 this were the case, Mr. Fischman has now filed his own
20 bankruptcy case which is now mute because that was
21 dismissed, so that concern is over.

22 The Second Circuit has also stated that the stay
23 should not be extended to co-defendants where there are
24 efforts made in bad faith by non-bankrupt co-defendants in
25 order to escape from the liability imposed by an adverse

1 District Court judgment. Here, Mr. Maidenbaum -- and that's
2 a Second Circuit opinion in 1986, and I said it before
3 Teacher's Insurance and Annuity Association of America
4 versus Butler 803 F.2d 61. Here Mr. Maidenbaum has accused
5 the Debtor and Mr. Fischman of colluding in bad faith to
6 prevent Mr. Fischman from having to comply with the State
7 Court Order. This motion is denied.

8 Now we have the motion to dismiss. Does anyone
9 wish to add anything in their papers?

10 MR. BERRY: Your Honor, I'm trying to unmute --
11 okay, I'm sorry. I am unmuted. The only thing I'd like to
12 add is that since we filed the motion, several claims have
13 been filed, two claims have been filed, our claim which is
14 about \$4.8 million and Mr. Maidenbaum's claim. Besides
15 that, the only other claim filed against Choshen, the only
16 other proof of claim with claims register is in the amount
17 of about \$26,000 by the IRS.

18 This is a classic two-party dispute. There is no
19 -- this is just simply a case between two parties, one of
20 which has a tax bill to pay. There is no other parties
21 involved. The second circuit, as you repeatedly made it
22 clear that in two-party disputes, the um, preferred forum is
23 the State forum. The points that should be made are that
24 the plan which is described as a liquidating reorganization
25 contemplates payments by Mr. Fischman to Choshen's debtors.

1 Mr. Fischman should not be able to pay another party's
2 obligations such as \$26,000 owed to the IRS in -- to the
3 prejudice of his own creditors.

4 The, um, the other point, final point that should
5 be made is that all of the assets listed in Mr. Fischman's
6 proof of claim are essentially non-existent. So where's Mr.
7 Fischman going to get this money to fund this liquidating
8 11?

9 THE COURT: Okay.

10 MS. TIRELLI: Your Honor, if I can just address
11 some of that for the record.

12 Your Honor, the Choshen is personified not by Mr.
13 Fischman but by the 15 percent member and that's Lawrence
14 Katz. There are assets that were discovered, there's
15 artwork in particular, I believe it's ten or twelve pieces
16 of art. I did locate an appraiser. I'm filing a motion
17 today to have that appraiser retained. And from there, we
18 can liquidate the artwork to help pay back some of these
19 debts. This is a liquidating Chapter 11, your Honor. It's
20 not about a dispute. It's about trying to get this company
21 wound up, closed down, all the assets sold and then the
22 money turned over to the creditors, whether it's the IRS or
23 it's Mr. Maidenbaum, whoever the legitimate creditors are,
24 we'd like to send the money over to those parties. That is
25 the purpose of this bankruptcy, and I don't see how that is

1 in any way against Mr. Maidenbaum's best interest.

2 THE COURT: Ms. Tirelli, what art do you have?

3 MS. TIRELLI: I'm sorry?

4 THE COURT: Tell me about the art.

5 MS. TIRELLI: Your Honor, there's um -- I can
6 actually take some out of the office and show it to your
7 Honor.

8 THE COURT: I don't need to see it. I need to
9 know --

10 MS. TIRELLI: Yes, your Honor. I believe it's 10
11 to 12 pieces of um -- they're 18th Century -- I'm told, I'm
12 not an art expert by any means which is why we're retaining
13 an appraiser who is an expert in Jewish themed art. It's
14 all Jewish themed. But they're beautiful lithographs, your
15 Honor, that are all beautifully framed. Um, and I --
16 they're I believe 17th and 18th Century lithographs. There
17 is also sketches by a famous now Jewish artist who did most
18 of his work prior to World War II in Germany as I understand
19 it, and that artist's name is Kazmar (phonetical). And so
20 the appraiser, when I spoke to her and I interviewed her
21 through Zoom, she told me that his stuff does actually sell
22 pretty well, and she said that while many of these
23 lithographs might be common, they're actually very
24 desirable.

25 So, I think that in all fairness, we should see

1 what the artwork is worth, what the valuation of is it
2 because I don't know if it's worth a thousand dollars the
3 collection, your Honor, I don't know if it's worth \$10,000
4 in the collection. Either way, your Honor, there are assets
5 here that can be liquidated. We've said from the beginning,
6 we're trying to liquidate here and, you know, sold off and
7 just given to the creditors. It's really as simple as that.
8 This is not a very complicated Chapter 11, and I don't want
9 to make it into something that it's not.

10 MR. BERRY: Okay.

11 MS. LEONHARD: Your Honor, may I be heard please?

12 THE COURT: You preempted me. I was about to say,
13 Ms. Leonhard.

14 MS. LEONHARD: Thank you, your Honor, Alicia
15 Leonhard for the U.S. Trustee. Your Honor, the U.S. Trustee
16 supports dismissal. In fact, U.S. Trustee filed his own
17 motion which we adjourned as a courtesy to Ms. Tirelli. But
18 a couple of things, your Honor. Number one, the Debtors
19 haven't filed any operating reports since the petition,
20 okay. Number two, that artwork is uninsured as far as we
21 know because the Debtor has provided no -- no evidence of
22 insurance of that artwork. It's now in Ms. Tirelli's
23 office, um, and, you know, we just don't know, you know --
24 it's -- we're concerned about the, you know, protecting and
25 preserving this alleged, you know, these alleged valuable

1 artworks. And so those two issues, you know, I think those
2 two also warrant dismissal.

3 MS. TIRELLI: Your Honor, if I may.

4 THE COURT: Let her finish.

5 MS. TIRELLI: I'm sorry. I thought she was
6 finished. My apologies.

7 MS. LEONHARD: Thank you, your Honor.

8 MS. TIRELLI: My apologies, I certainly didn't
9 mean to cut Ms. Leonhard off in any way, shape or form.
10 Your Honor, those are arguments that were made in
11 Ms. Leonhard's motion which of course is not before the
12 Court today. As far as the -- as the insurance is
13 concerned, your Honor, really--

14 THE COURT: The motion to dismiss isn't before the
15 Court today and she just simply said that they have joined
16 that motion to dismiss.

17 MS. TIRELLI: Yes, your Honor, but the additional
18 issues that are being brought to the Court today, number one
19 regarding insurance, I would just like to address that. The
20 purpose of getting it appraised is that we know exactly how
21 much we need to insure it for. I don't know if these are
22 worthless. I don't know if they're worth something. I have
23 no idea. For safekeeping, they are in my office. I'm in a
24 secure building, your Honor, it's a Ginsberg (phonetical)
25 building. It's extremely secure, your Honor.

1 THE COURT: Insurance is not the point. You're
2 only bringing it up now and we do not have operating
3 reports, and I know there are no operating reports.

4 MS. TIRELLI: But, your Honor, we have filed the
5 operating reports. If I can just confer with our legal --
6 they have been filed this morning.

7 THE COURT: Oh, this morning, Ms. Tirelli.

8 MS. TIRELLI: Well, your Honor, the operating
9 reports, the business is not operating. This is a
10 liquidating, and the forms are filled out. We did
11 provide -- they have been filed this morning, I just
12 confirmed. Your Honor, it's not an ongoing business, it's a
13 liquidation. So the operating reports, they are filed. And
14 I've tried to get Ms. Leonhard more than once on the phone
15 and also by e-mail, and I have not gotten a response. I
16 understand she's very busy, but I would like to have that
17 conversation with her and talk about the path forward for
18 this case. And it is a liquidating 11. Let's give it a
19 chance.

20 MR. BROWNSTEIN: Your Honor --

21 THE COURT: Mr. Brownstein, this is your motion to
22 dismiss. I am only going with your motion to dismiss, not
23 Ms. Leonhard's, and I am ruling on that now. Do you wish to
24 add anything to your motion?

25 MR. BROWNSTEIN: No, your Honor.

1 THE COURT: Very good. Mr. Maidenbaum -- anybody
2 else wish to add anything to Mr. Maidenbaum's motion to
3 dismiss?

4 MR. BERRY: Yes.

5 THE COURT: Mr. Berry, it's Mr. Maidenbaum's
6 motion to dismiss I am hearing.

7 MR. BERRY: Yes, your Honor. Mr. Maidenbaum's
8 motion to dismiss. This artwork was disclosed more than two
9 months ago. There's been plenty of time to get appraisals,
10 plenty of time to get insurance. The operating reports that
11 were filed earlier today showed zero cash, and with respect
12 to the artwork, the values to be determined. This is just a
13 waste of everybody's time. It doesn't belong in Bankruptcy
14 Court.

15 THE COURT: Very good. Thank you. Mr. Maidenbaum
16 moves to dismiss the Debtor's Chapter 11 case with prejudice
17 under 1112 (B) (1), (B) (4) (a), (B) (4) (m) and there is no
18 reasonable possibilities the Debtor can reorganize and
19 because the case was filed in bad faith.

20 Ms. Tirelli, one question I will ask you. What
21 about a conversion to a 7?

22 MS. TIRELLI: Well, your Honor, I don't know that
23 that will be out of the question but, um, at this point, my
24 understanding is that Mr. Fischman does want to -- does want
25 to contribute as much as ten percent to the creditors, you

1 know, if we can liquidate this in an 11, and that would be
2 the difference between a 11 versus a 7 where he would not be
3 under an obligation to do that, and it would be strictly
4 gratuitous. And it's, something again, I wanted to speak to
5 Ms. Leonhard about and Mr. Fischman's Counsel.

6 Now, this morning obviously there was a bit of game
7 changer here. He's now an individual who's not in
8 bankruptcy who very well can contribute to this plan. You
9 know, I think that that needs to be discussed with my client
10 before I can answer it, if we're ready for a 7 at this time.

11 THE COURT: It's not that we can't do a 7. I'm
12 ready to rule --

13 MS. TIRELLI: Yes, your Honor. Thank you.

14 THE COURT: Because the case was filed in bad
15 faith and motivated solely to delay the State Court
16 post-judgment deposition of and documents produced by a
17 contempt proceeding against Aaron Fischman, these are
18 basically really intertwined. On April the 25th, 2023, the
19 Nassau County Supreme Court Justice Bruce Cozzens filed an
20 order which held that unless Mr. Fischman appeared in the
21 Court for the deposition and document production required
22 under Mr. Maidenbaum's subpoena, Mr. Fischman would be
23 arrested and incarcerated.

24 Now, that's Mr. Fischman. That's not this case.
25 But this case is the Cozzen case, and it seems to be that it

1 is a continuation of everything we just read in
2 Mr. Fischman's case. I'm gonna take a quick break.

3 MS. TIRELLI: Thank you, your Honor.

4 MR. BERRY: Thank you, your Honor.

5 (Whereupon a short recess was taken.)

6 THE COURT: Very good, I apologize. I'm on mute.
7 No, I apologize. I just needed to get my own bearings on
8 this because they were moving together, so let me begin
9 again. I'm on the motion to dismiss. Mr. Maidenbaum moves
10 to dismiss the Debtor's Chapter 11 case with prejudice, and
11 I need to give a little bit of a background to get to the
12 debtor and in this case because they are intertwined. With
13 prejudice under 1112 (B) (1), (B) (4), (B) (A) and (B) (4) (M),
14 if there is no reasonable possibility that the Debtor can
15 reorganize, and because the case was filed in bad faith and
16 motivated solely to delay the State Court post-judgment
17 deposition of documents produced by and contempt proceeding
18 against Aaron Fischman. Again, and I go -- and I'm
19 repeating myself, but I had to make it clear. On October
20 the 25th, 2023, Nassau County Supreme Court Justice Bruce
21 Cozzens filed an order which held that unless Fischman
22 appeared in court for the deposition and document production
23 requests required under Mr. Maidenbaum's subpoena,
24 Mr. Fischman would be arrested and incarcerated.

25 As the order recounts, it has been almost seven

1 years since the judgment, based upon a confession of
2 judgment was entered in this action. There has been
3 constant avoidance of providing financial documents and
4 failure to comply with court orders. Though claiming not to
5 have funds, one million was paid to another creditor.
6 Mr. Cozzen's order continues. The underlying subpoena was
7 served in June of 2017, almost six years ago, in spite of
8 the orders of Justice Murphy, the undersigned, there has
9 been no -- has been no compliance whatsoever. There have
10 been ten motions related to the 2017 subpoenas, including
11 six by the Plaintiff for contempt of court, and four by the
12 Defendant seeking to quash or for a protective order.

13 The conduct on the part of the defendant, and I
14 quote Judge Cozzen "is making a mockery of this Court." The
15 order further held that Fischman could not purge the
16 contempt and avoid arrest and incarceration by complying
17 with a subpoena-- could, excuse me, could purge the contempt
18 and avoid the arrest and incarceration by complying with
19 subpoena and appearing in court on May the 9th for his
20 deposition.

21 The first of these alleged bad faith filings was an
22 involuntary Chapter 11 case filed by the Debtor against his
23 CEO Mr. Fischman on May the 8th, 2023, one day before he was
24 ordered to appear in state court or faced arrest and
25 incarceration. The case was filed by pro se Petitioner name

1 Aaron Berlin (phonetical) and dismissed for failure to serve
2 the summons July the 11th, 2023. Ms. Tirelli appeared on
3 behalf of Mr. Fischman in that involuntary case. Following
4 the dismissal, the in-court deposition of Mr. Fischman was
5 rescheduled for August the 14th, 2023. Debtor then filed
6 this case on August the 2nd, 2023 by his attorney.

7 Mr. Fischman allegedly makes a clearly erroneous
8 arguments to the state court that the stay prevented him
9 from being deposed. Mr. Fischman's case was -- Mr. Fischman
10 was severed from the case August the 4th, 2023. He then
11 filed a pro se Chapter 13 on August the 10th, 2023, in order
12 to stay the state court proceeding, including his deposition
13 and document production. That Chapter 13 case was filed as
14 a bare bone petition without schedules or a plan, despite
15 the fact that Mr. Fischman was ineligible to be a debtor
16 under Chapter 13, and as we know, there was a motion made to
17 convert that we have dealt with this morning.

18 Mr. Maidenbaum alleges that the Debtor cannot
19 reorganize. Debtor owes Mr. Maidenbaum almost five million
20 and is being sued by the New York State Attorney General for
21 millions of dollars for losses suffered by investors.
22 Debtor has no assets and conducts no business. The only
23 purported asset is its stock in Cardis that today we did
24 hear there were some possible artwork, but of even valued,
25 it would be de minimus as lithographs, even if we can get

1 the high end on it and the amount.

2 Mr. Maidenbaum holds at least -- I don't know that
3 to be true, we don't have an estimate, but it was
4 lithographs and -- of Ms. Tirelli's indicated that possible
5 value, but we don't know the answer to that. Mr. Maidenbaum
6 holds judgments against Cardis for the same five million.
7 Additionally, the New York State Attorney General is suing
8 Cardis for losses of 72 million.

9 Debtor also has alleged it holds technology that it
10 can sell, but the State has already determined that to be a
11 lie. In its Complaint, the Attorney General alleges that no
12 technology was ever developed. Cardis has no contracts or
13 contracts that it represented to have to its investors. And
14 its promise that an IPO was on the horizon were allegedly
15 just another strategy to induce investors to continue
16 pouring money into an enterprise that Defendants knew was
17 not available.

18 According to the Debtor's affidavit, Aaron Fischman
19 will be funding debtor's plan by paying as much as ten
20 percent to each valid creditor so long as the dissolution
21 remains in bankruptcy, a bankruptcy case under Chapter 11.
22 That's a quote. Debtor fails to provide any proof that
23 Mr. Fischman has income. He is in debt to Mr. Maidenbaum
24 for over four million and is being sued by the New York
25 State for even more.

1 The Debtor also swears in an affidavit that his
2 only assets are Cardis stock. In his petition, it values
3 these assets between zero and 50,000 and estimates its
4 liabilities between one and ten million. It is not clear
5 what value the stock has, but it is most likely valueless as
6 Cardis is also in debt to Maidenbaum and facing additional
7 litigation. Section 1112 (B)(1) states that Court shall
8 convert a case under this chapter to a case under Chapter 7
9 or dismiss under this chapter, which ever is in the best
10 interests of the creditors and the estate for cause unless
11 the Court determines that the appointment of a Trustee or an
12 examiner is in the best interest of the creditor's estate.
13 Cause is defined as substantial or continuing loss to or
14 diminution of the estate, and the absence of a reasonable
15 likelihood of rehabilitation, and an inability to effectuate
16 substantial consummation of a confirmed plan. That is
17 quoting 1112 (B)(4)(A) and (M). While bad faith is not
18 enumerated as a cause in 1112 (B) courts have and I quote,
19 "Uniformly held that an implicit prerequisite to filing a
20 bankruptcy petition is good faith on the part of the Debtor,
21 the absence of which may constitute cause for dismissal."
22 That's In re Loco Realty 2009 Westlaw 283050 Southern
23 District of New York 2009. And the Second Circuit Court
24 looks to the following factors to determine whether the
25 debtor has acted in bad faith: The Debtor has only one

1 asset. The Debtor has few unsecured creditors whose claims
2 are small in relation to those of the secured creditor. The
3 Debtor has one asset. The Debtor's one asset is the subject
4 of a foreclosure action as a result of their arrearage or
5 default on the debt. The Debtor's financial condition is in
6 essence a two-party dispute between the Debtor and secured
7 creditors which can be resolved in the pending state
8 foreclosure action. The timing of the Debtor's filing,
9 filing evidences an intent to delay or frustrate the
10 legitimate efforts of the Debtor's secured creditors to
11 enforce their rights. The Debtor has little or no cash
12 flow. The Debtor can't make current expenses, including the
13 payment of personal property and real estate taxes, and the
14 Debtor has no employees. Again, Loco Realty, a Southern
15 District of New York case citing In re CTC 9th Avenue
16 Partners 113 F.3d, 1304, a Second Circuit 1997 opinion.

17 The Debtor meets almost every one of these factors
18 demonstrating that this is a bad faith filing. Debtor is in
19 the process of winding down. Debtor has no employees.
20 Debtor has little or no cash flow. Debtor cannot meet
21 current expenses. Debtor has only one asset, the Cardis
22 stock which has minimal value in comparison to its debt.
23 Debtor's one asset is the subject of collection litigation
24 and other litigation. Debtor's financial condition is in
25 essence a two-party dispute which can be resolved in the

1 state court. Debtor lists only eight unsecured creditors on
2 his petition, most of whom are part of this Cardis
3 litigation. Mr. Maidenbaum and the New York State Attorney
4 General are by far the largest of these creditors. The
5 timing of the filing evidences an intent to delay and
6 frustrate Mr. Maidenbaum, and it is as clear that this is the
7 case and Mr. Fischman's case were filed as a part of a
8 scheme to prevent the collection activities of
9 Mr. Maidenbaum in State Court.

10 Debtor also lists every creditor as disputed in his
11 petition and lists Mr. Maidenbaum's debt as zero, despite
12 its two State Court judgments against the Debtor. If debtor
13 wishes to dispute this debt, State Court is the more
14 appropriate form to do so.

15 Cause to dismiss can be found under 1112 (B) (4) (A)
16 and (M), as it does not appear the Debtor has any assets
17 with which it will be able to confirm a plan, and there is
18 not a reasonable likelihood of rehabilitation.

19 The Chapter 11 case is dismissed. Mr. Berry,
20 submit an order.

21 MR. BERRY: Thank you, your Honor.

22 THE COURT: Very good. Have a good Thanksgiving
23 everyone.

24 (Proceedings adjourned 10:33 a.m.)
25

C E R T I F I C A T I O N

I, Laurie A. Pellitteri, certify that the foregoing transcript of proceedings is a true and accurate record of the proceedings.

Signature: Laurie A. Pellitteri (Electronically signed.)

AMERICAN LEGAL TRANSCRIPTION

11 Market Street, Suite 215

Poughkeepsie, New York 12601

Dated: November 22, 2023